

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KIMBERLY D.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 2:24-cv-01958-GJL

SOCIAL SECURITY DISABILITY  
APPEAL ORDER

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule 13. *See also* Consent to Proceed Before a United States Magistrate Judge, Dkt. 3. This matter has been fully briefed. *See* Dkts. 7, 11, 12.

After considering the administrative record (AR) and all memoranda, the Court concludes the Administrative Law Judge (ALJ) did not err in finding Plaintiff not disabled. The Court accordingly **AFFIRMS** the Commissioner's final decision in this matter.

**I. PROCEDURAL HISTORY**

Plaintiff's application for Disability Insurance Benefits (DIB) was denied initially and following reconsideration. AR 60–105. Plaintiff's requested hearing was held before the ALJ on

September 12, 2023. AR 35–59. On December 26, 2023, the ALJ issued a written decision concluding Plaintiff was not disabled. AR 14–34. On October 1, 2024, the Appeals Council declined Plaintiff’s request for review, making the ALJ’s decision the Commissioner’s final decision subject to judicial review. AR 1–6. On November 27, 2024, Plaintiff filed a Complaint in this Court seeking judicial review of the ALJ’s decision. Dkt. 1. Defendant filed the sealed AR in this matter on January 27, 2025. Dkt. 5.

## II. BACKGROUND

Plaintiff was born in 1970 and was 50 years old on June 1, 2020, her alleged date of disability onset. *See* AR 18, 28. Plaintiff has at least a high school education. AR 29. According to the ALJ, Plaintiff suffers from, at a minimum, the severe impairments of degenerative disc disease of the spine; obesity; anxiety disorder(s) with panic; Post-Traumatic s Stress Disorder (PTSD); and major depressive disorder. AR 20. The ALJ found Plaintiff had a Residual Functional Capacity (RFC) with the following mental limitations:

She can learn, remember, and perform simple, routine, and repetitive work tasks, involving short and simple work instructions, which are performed in a routine and predictable work environment with few and only simple work place changes. She can attend, concentrate, and maintain pace for simple, routine, and repetitive work tasks for two hours at a time with normal breaks. She may have frequent contact with supervisors and coworkers during all periods of initial training. Thereafter she may have occasional and superficial contact with supervisors and coworkers. She should have only minimal (defined as 10 percent of the work period or less) and superficial contact with the public.

*See* AR 23–24. Based on the assessed RFC, the ALJ found Plaintiff could perform work existing in significant numbers in the national economy and therefore was not disabled. AR 29.<sup>1</sup>

---

<sup>1</sup> The ALJ assessed different RFCs for two periods (the onset date through July 31, 2022, and August 1, 2022, through the DLI) but included the same mental limitations quoted here for both periods. *See* AR 23–24.

### III. DISCUSSION

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of benefits if, and only if, the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

In her opening brief, Plaintiff argues the ALJ erred in (1) assessing her subjective mental symptom testimony, (2) assessing her husband’s statement, and (3) failing to resolve an alleged conflict between the Dictionary of Occupational Titles (DOT) and the Vocational Expert (VE)’s testimony. Dkt. 7.

#### A. Subjective Symptom Testimony

Plaintiff challenges the ALJ’s assessment of her testimony regarding the severity of her mental symptoms. Dkt. 7 at 2. Plaintiff testified she cannot function for prolonged periods in public due to anxiety and stress (*see* AR 45, 250), she has difficulties concentrating sufficiently to complete tasks (*see* AR 44, 46, 254), and cannot engage in driving and other activities due to stress (*see* AR 250). The ALJ was required to provide specific, clear and convincing reasons for rejecting this testimony. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (*citing* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

The ALJ properly discounted Plaintiff’s testimony because he found “the intensity, persistence and limiting effects of [her] symptoms” inconsistent with the objective medical evidence and Plaintiff’s functioning. AR 25. “Contradiction with the medical record is a sufficient basis for rejecting the claimant’s subjective testimony.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995)).

1 The ALJ found Plaintiff's testimony inconsistent with normal mental status  
2 examinations, as well as her denials of panic attacks, PTSD symptoms, and depressive episodes.  
3 *See* AR 25–26. The ALJ reasonably found such evidence inconsistent with Plaintiff's testimony.  
4 Contrary to Plaintiff's testimony of significant difficulties with concentration, nearly all mental  
5 status examinations found she had normal concentration. *See* AR 345, 348, 351, 354, 433, 484,  
6 886, 904, 932, 946. The same evidence showed normal judgment and thought process. Plaintiff  
7 contends the mental status examinations were not “formal mental status examinations” (Dkt. 7 at  
8 4), but even if this is so, they still reflect providers' judgment about Plaintiff's symptomology at  
9 appointments which the ALJ could rely upon. Aside from Plaintiff's statements to providers that  
10 she sometimes struggled completing tasks, there is little evidence demonstrating abnormal  
11 concentration in the record. The ALJ reasonably weighed the evidence as undercutting Plaintiff's  
12 testimony.

13 Similarly, Plaintiff's denials of depressive symptoms and panic attacks at medication  
14 management appointments (*see* AR 338, 341, 344, 482–83, 496, 860, 878, 884, 888, 944, 956,  
15 966, 976–77, 988–89, 994–95) along with treatment notes indicating she was doing well,  
16 experiencing improvement, and largely symptom free (*see* AR 338, 341, 344, 500, 502, 860, 868,  
17 920, 922, 934, 950, 952, 954, 956, 960), could reasonably be found to be inconsistent with her  
18 testimony that her symptoms of panic attacks and PTSD prevent her from spending substantial  
19 time outside of her home.

20 Arguing to the contrary, Plaintiff points to treatment notes showing she continued to have  
21 symptoms, demonstrating her symptoms waxed and waned and were susceptible to stressors. *See*  
22 Dkt. 7 at 5–6. And while this assertion may be accurate in part as many treatment notes appear to  
23  
24

1 reveal Plaintiff had continuing symptoms during the relevant period, the ALJ acknowledged as  
2 much, finding much of her continued symptomology was captured by the RFC:

3 I rely on evidence noting family interactions as a common stressor to find that she  
4 should limit work-related interactions; though because these complaints seem  
5 limited to family members and not other individuals, she appears to remain capable  
6 of at least some interaction with supervisors, coworkers, and the public. [...] I find  
7 some limitation on the complexity of tasks, the concentration demands required,  
8 and the stability of the workplace to be appropriate to avoid exacerbating anxiety  
9 symptoms.

10 AR 28.

11 This interpretation of the medical evidence was supported by substantial evidence. Most  
12 of the treatment notes reflecting more severe symptoms appeared to be related to difficult  
13 interactions with Plaintiff's family (*see* AR 476, 504, 892, 898, 900, 906, 916, 924, 992) and  
14 only exacerbated by ancillary interactions with others. *See* AR 470. Moreover, the records  
15 reflected her improved ability to handle such stressors (*see* AR 868, 894, 936, 984), supporting  
16 the ALJ's finding that she was capable of some social interaction.

17 Other exacerbators identified in the treatment notes included physical issues (*see* AR 488,  
18 490, 492, 882, 926) but Plaintiff has not challenged the ALJ's findings with respect to her  
19 physical limitations, including his findings that her physical issues decreased in severity after  
20 receiving surgery during the relevant period. *See* AR 23–24.

21 Finally, some notes identified her traveling, moving, or having to stay in novel  
22 environments as exacerbating her symptoms (*see* AR 486, 488, 506), but the ALJ properly  
23 included limitations in workplace changes to address such issues. Thus, the ALJ properly  
24 considered the contrary evidence identified by Plaintiff.

25 The ALJ also properly found Plaintiff's testimony inconsistent with evidence she was  
26 able to leave her house more often during the relevant period. *See* AR 26 (citing AR 338, 341,

344, 353); *Orn v. Astrue*, 495, F.3d 623, 639 (9th Cir. 2007) (activities of daily living proper basis for discounting testimony if inconsistent with testimony). And the ALJ properly considered the fact that Plaintiff had considered looking for work during the relevant period but had only been prevented from doing so due to her physical impairments (the assessment of which she does not challenge). *See* AR 26, 347, 350; *cf. Tomassetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (evidence Plaintiff not working for non-impairment related reasons valid consideration).

In sum, the ALJ provided specific, clear, and convincing reasons for rejecting Plaintiff's testimony about the severity of her mental symptoms.<sup>2</sup> The Court need not consider the ALJ's remaining reasons for rejecting Plaintiff's testimony, as any error with respect to those reasons would be harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (An ALJ's error in discounting subjective testimony "is harmless so long as there remains substantial evidence supporting the ALJ's decision and the error 'does not negate the validity of the ALJ's ultimate conclusion.'").

---

<sup>2</sup> The ALJ found Plaintiff presented objective medical evidence of an underlying impairment which could reasonably be expected to produce her alleged symptoms although the ALJ questioned the "intensity, persistence, and limiting effects" of these symptoms. AR 25. If such evidence is present and there is no evidence of malingering, the "specific, clear and convincing" standard applies. *Ghanim*, 763 F.3d at 1163. Here, however, the record may reflect some affirmative evidence of malingering. *See* AR 1016 (Consultative Examination note: "She sometimes refused to try on challenging activities, though, and she seemed to give an uneven effort. The embedded validity indicators included a WMS Rarely Missed Items (RMI) score of 219, which is an indication of good effort and cooperation, along with a Reliable Digit Span of 4, which points to likely malingering."); AR 26. It is of no consequence that the ALJ did not make a particular finding of malingering. Rather, evidence suggesting malingering is sufficient to vitiate the clear and convincing standard of review for subjective symptom testimony. *See Schow v. Astrue*, 272 Fed. App'x 647, 651 (9th Cir. 2006) (unpublished) ("[T]he weight of our cases hold that the mere existence of 'affirmative evidence suggesting malingering' vitiates the clear and convincing standard of review."); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1160 n.1 (9th Cir. 2008) (affirming *Schow's* statement of law). However, because the ALJ applied the higher legal standard by giving specific, clear, and convincing reasons for rejecting Plaintiff's testimony, the Court need not determine whether the lower standard of review could have been applied.

**B. The Statement of Plaintiff's Husband**

Plaintiff's husband submitted a statement describing some of her symptoms and limitations. AR 268–74. Under Ninth Circuit precedent, an ALJ's failure to provide germane reasons for rejecting a lay witness statement is harmless where the statement is cumulative of Plaintiff's subjective testimony, the ALJ provided proper reasons for rejecting that subjective testimony, and those reasons apply to the lay witness statement. *Molina*, 674 F.3d at 1116–22. Such is the case here.

Plaintiff's husband's statement describes no limitations beyond those described in Plaintiff's testimony—he described symptoms of anxiety, difficulty interacting with others, and panic attacks. *See* AR 268–72. The ALJ properly discounted that testimony because it was inconsistent with objective medical evidence and some of Plaintiff's activities of daily living, and that same reason applies to Plaintiff's husband's statement. The ALJ's failure to discuss the statement therefore does not require reversal.

**C. DOT Conflict**

Generally, where the VE “is qualified and presents cogent testimony that does not conflict with other evidence in the record, the [VE's] testimony” will constitute substantial evidence. *Ford v. Saul*, 950 F.3d 1141, 1159 (9th Cir. 2020). However, “if the expert's opinion . . . conflicts with, or seems to conflict with, the requirements in the [Dictionary of Occupational Titles (DOT)], then the ALJ must ask the expert to reconcile the conflict before relying on the expert to decide if the claimant is disabled.” *Lemear v. Berryhill*, 865 F.3d 1201, 1205–06 (9th Cir. 2017) (quoting *Gutierrez v. Colvin*, 844 F.3d 804, 807 (9th Cir. 2016)). To trigger the duty of inquiry, the conflict must be “obvious or apparent.” *Lemear*, 865 F.3d at 1205–06.

1 Plaintiff contends the mental limitations in the RFC conflict with the DOT descriptions of  
2 the three positions the ALJ relied upon at step five because all three positions require a Level 2  
3 Reasoning. Dkt. 7 at 10–12. Level 2 Reasoning involves “apply[ing] commonsense  
4 understanding to carry out detailed but uninvolved written or oral instructions” and “deal[ing]  
5 with problems involving a few concrete variables in or from standardized situations.” DOT App.  
6 C. It is more demanding than Level 1 (“simple one- or two-step instructions” and “standardized  
7 situations with occasional or no variables”) and less demanding than Level 3 (instructions in  
8 “written, oral, or diagrammatic form,” “several concrete variables”). *See id.*

9 The conflict between Level 2 Reasoning and the RFC must be more than a potential one.  
10 Because DOT occupational descriptions “list[] ‘maximum requirements’ of the jobs as ‘generally  
11 performed,’ . . . not all *potential conflicts* between an expert’s job suitability recommendation  
12 and the [DOT’s] listing of ‘maximum requirements’ for an occupation will be apparent or  
13 obvious.” *Gutierrez*, 844 F.3d at 807–08 (quoting SSR 00-4p,<sup>3</sup> emphasis added). In *Gutierrez*,  
14 for instance, the Ninth Circuit found no conflict between an occasional-overhead-reaching  
15 limitation and a DOT description requiring frequent reaching because (1) “not every job that  
16 involves reaching requires the ability to reach overhead” and (2) the position in question had no  
17 requirements likely or foreseeably involving overhead reaching. 844 F.3d at 807–08.

18 Following *Gutierrez*, for there to be a conflict, Plaintiff must show either that (1) there is  
19 a complete incompatibility between Level 2 Reasoning and the RFC, or (2) it is likely or  
20 foreseeable that the specific functions of the positions identified would require mental abilities  
21 beyond those included in the RFC. *See id.* Plaintiff has not argued any of the specific tasks  
22

---

23 <sup>3</sup> SSR 00-4p was rescinded by SSR 24-3p, but that ruling does not apply to decisions (like the one reviewed here)  
24 rendered before January 6, 2025.



1 required by the positions identified at step five are inconsistent with the mental limitations in the  
2 RFC. *See* Dkt. 7 at 10–11. Plaintiff’s argument therefore fails because there is no complete  
3 incompatibility between Level 2 Reasoning and the RFC—that is, not every job involving Level  
4 2 Reasoning would involve mental demands beyond those in the RFC.

5       There is no conflict between Level 2 and the VE’s testimony that the identified positions  
6 involved only “short work instructions.” Although Level 2 Reasoning describes detailed—and  
7 therefore longer—instructions, that is only the “maximum requirement” of Level 2 positions. *See*  
8 *Gutierrez*, 844 F.3d at 807–08. Some Level 2 positions will require far less than “detailed”  
9 instructions—they may require instructions only slightly longer than the one- to two-step  
10 instructions of Level 1. DOT App. C. Thus, as the Ninth Circuit has noted in dictum, some Level  
11 2 jobs “might involve only three tasks that are simple to explain,” and therefore are consistent  
12 with short, simple instructions. *Leach v. Kijakazi*, 70 F.4th 1251, 1256–57 (9th Cir. 2023).<sup>4</sup>

13       Similarly, there is no conflict between Level 2 and the VE’s testimony that the identified  
14 positions involved only “simple, routine, and repetitive work tasks” and “simple instructions.”  
15 Level 2 tasks require “few concrete variables” (consistent with doing simple work) and involve  
16 “standardized situations” (consistent with routine and repetitive work). *Id.* As the Eighth Circuit  
17 recognized in analyzing this same issue, “involved” instructions are likely “complicated,

---

18  
19 <sup>4</sup> In support of her argument, Plaintiff cites (Dkt. 7 at 10) to *Leach*’s discussion of the Fourth Circuit’s decision in  
20 *Thomas v. Berryhill*, 916 F.3d 307, 314 (4th Cir. 2019), which held there was a conflict between Level 2 Reasoning  
21 and a short instructions limitation. However, the Ninth Circuit did not go so far in *Leach*. *See* 70 F.4th at 1257 (“The  
22 Fourth Circuit’s holding in *Thomas* went beyond ours.”). The Fourth Circuit’s holding in *Thomas* is inconsistent  
23 with the Ninth Circuit’s approach to such issues. As discussed, under Ninth Circuit precedent, a potential conflict is  
24 insufficient. *See Gutierrez*, 844 F.3d at 807–08. As the Fourth Circuit acknowledged, at least some Level 2 positions  
might involve short instructions. 916 F.3d at 314. But under Ninth Circuit precedent, this would mean there is no  
conflict between Level 2 reasoning and a short instructions limitation absent any additional showing. *See Gutierrez*,  
844 F.3d at 808–09. Indeed, demonstrative of such an inconsistency, the Fourth Circuit found a conflict in *Thomas*  
because the conflict was “as apparent as the conflict [it] identified in” another Fourth Circuit case, *Pearson v. Colvin*,  
810 F.3d 204, 210 (4th Cir. 2015). But in *Pearson*, the Fourth Circuit found there was a conflict between an  
occasional-overhead-reaching limitation and a frequent-reaching DOT description, *id.*, a result contrary to the Ninth  
Circuit’s conclusion in *Gutierrez*, 844 F.3d at 807–08.

intricate” ones, but the “uninvolved” instructions required by Level 2 Reasoning are likely to not be so. *Moore v. Astrue*, 623 F.3d 599, 604 (8th Cir. 2010) (citing *Webster’s Third New Int’l Dictionary* 1191, 2499 (2002)). Level 2 Reasoning contains no requirement that an individual follow abstract, diagrammatic instructions, as Level 3 reasoning does. *See* DOT App. C. For that reason, as the Ninth Circuit noted in *Zavalin v. Colvin*, 778 F.3d 842, 847 (9th Cir. 2014), Level 2 Reasoning is consistent with a limitation to simple and routine tasks.

Finally, there is no conflict between Level 2 and the VE’s testimony that the identified positions would be “performed in a routine and predictable work environment with few and only simple workplace changes.” As the Ninth Circuit recognized in *Stiffler v. O’Malley*, reasoning levels are revealing as to the situational variables in tasks that might be performed at a job, but a limitation concerning the frequency of changes in a workplace environment “concerns broader revisions to the workplace environment” which “are distinct from ‘situational variables’ in the tasks being performed.” 102 F.4th 1102, 1109–10 (9th Cir. 2024).

In sum, at least some positions involving Level 2 Reasoning are likely to involve functions consistent with the mental limitations in the RFC; there is no complete incompatibility between the two. Because Plaintiff has not argued there are inconsistencies between the particular functions of the positions identified at step five and the RFC, there is no demonstrated conflict between Level 2 Reasoning and the VE’s testimony that Plaintiff could perform the positions identified at step five.

//

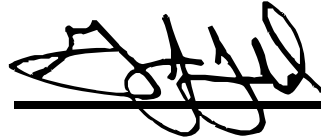
//

//

1 IV. CONCLUSION

2 Based on these reasons and the relevant record, the Court **ORDERS** that this matter be  
3 **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).  
4

5 Dated this 25th day of June, 2025.

6  
7 

8 Grady J. Leupold  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24